IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.684 OF 2006

Sindhudurg Zilla Madhyamik
Adhyapak Sahakari Patpedhi
Maryadit .. Petitioner

Versus

S.J.Akkiwate and Ors. .. Respondents.

Mr.N.V.Walawalkar, Senior Advocate with Sudhir Prabhu for petitioner
Mr.M.N.Malkani for respondent Nos.1 to 12
Mr.M.H.Solkar, AGP for respondent Nos. 14 to 18.

CORAM : S.C.DHARMADHIKARI, J.
DATE : 13th February 2006.

P.C.

. Heard Mr.Walawalkar, learned Senior Counsel for petitioner and Mr.Solkar, A.G.P. for respondent Nos. 14 to 18 and Mr.Malkani appearing for respondent Nos. 1 to 12.

2. By this petition under Articles 226 and

227 of the Constitution of India, petitioners are challenging an order passed by the Minister of State for Cooperation, Govt. of Maharashtra dated 8th July 2005 in Revision Application No.199 of 2005.

3. This revision application was preferred by respondent Nos. 1 to 12 herein. They were aggrieved by the order dated 23rd March 2005, which was passed by the Divisional Joint Registrar, Coop.Societies Navi Mumbai in Appeal/Revision No.70 of 2004. By the order passed on 23rd March 2005 the Divisional Joint Registrar confirmed the order dated 10th November 2004 passed by respondent No.13 in exercise of powers conferred by Section 88 of Maharashtra Cooperative Societies Act, 1960.

4. Petitioner is a cooperative society. Respondent Nos. 1 to 12 are the Directors/ex-Directors of petitioner society. In

a building construction activity undertaken by the then Managing Committee, it is observed that, by the acts of omission and commission of respondent Nos. 1 to 12, loss is caused to petitioner society.

5. It is brought to my notice by Mr.Walawalkar that the aforesaid acts of omission and commission were discovered during the course of audit of petitioner society conducted by auditor.

6. Based upon the findings in the report of auditor, proceedings were initiated and ultimately the report of auditor was accepted and further action initiated by respondent No.13. That ended in the order dated 10th November 2004 being passed and which was subject matter of challenge before Divisional Joint Registrar and thereafter the Minister.

7. With the assistance of Mr.Walawalkar as also the learned Advocate for respondent Nos. 1 to 12, I have perused the order passed by the authorities including the Minister.

8. Minister is right in his conclusion that respondent No.12 could not have, after making a report, conducted proceedings himself. That he is a Judge in his own cause is obvious from a perusal of the order passed by the Minister. However, none can dispute that power of Registrar to asess damages against delinquent promotors etc. is conferred in public interest. Merely because the above mentioned defect is noted in the proceedings by the Minister does not mean that the report has to be discarded on merits and without a further and proper probe. Ultimately, if by the acts of omission and commission, a loss is caused to the society and the same has to be compensated by delinquents, then a complete code is enacted in the Coop.Societies Act.

Ultimately, this provision is to ensure accountability of the office bearers/ committee members. This provision proceeds on the basis that such officers are exercising powers as Trustees and by their acts, if they cause any loss to the society, then they have to be held either accountable or guilty of breach of trust and thereupon a direction be issued to them to compensate the society.

9. The Minister, while passing the impugned order has gone into the merits of the matter and has discarded the report largely influenced by the fact that respondent No.12 was the maker of the same and it is he who tried the guilty persons. That apart, the finding of the Minister that respondent Nos. 1 to 12 have not misappropriated the funds of society is seriously contested by Mr.Walawalkar before me. He has invited my attention to the order dated 10th November 2004, where, the appellate authority has

adverted to all materials and has recorded a finding that instead of accepting the lower bid, higher bid was accepted and that a sum of Rs.30 lakhs has been spent for unproductive work. That finding is reversed by the Minister without giving appropriate opportunity to the petitioner as well as to the respondent Nos. 1 to 12.

10. The Minister is influenced by the fact that the Divisional Joint Registrar treated the Appeal as a Revision. Once the order is appealable, then the Divisional Joint Registrar should have treated it as such and disposed of the same in exercise of the appellate powers.

11. The criticism of respondent Nos. 1 to 12 to the above extent is also correct and appellate authority ought to have gone into all matters and instead of rendering a cryptic finding should have given elaborate reasons for the conclusion arrived at, more particularly, considering the

seriousness of the matter.

12. However, in my view, sending the matter back to the Divisional Joint Registrar or the Minister concerned, will not serve any purpose because of the basic fallacy noted by the Minister. Order of Respondent No.12 dated 10th November 2004 will have to be set aside and the matter be restored to the file of Registrar Coop.societies, Maharashtra for either deciding it by himself or to delegate the same to the Divisional Joint Registrar who shall thereafter proceed in accordance with law.

13. Parties are therefore directed to appear before the Registrar, Coop.Societies on or before 27th February 2006 and thereafter the Registrar shall proceed in the matter in accordance with law, uninfluenced by the order passed by the Divisional Joint Registrar on 22nd March 2005 and by the Minister dated 8th July 2005.

14. It is clarified that it is open for Registrar to deal with the matter himself or to delegate it to such authority as is permissible in law. It is further clarified that all contentions of both parties on merits are expressly kept open and merely because this Court is inclined to exercise its writ jurisdiction, does not mean that petitioner society has proved the charges or that respondent Nos. 1 to 12 are guilty of any lapse or of acts of omission and commission. The matter is open either way for parties and for the Registrar to take appropriate action. All concerned to act on an authenticated copy of this order.

(S.C.DHARMADHIKARI, J)